THE HON'BLE SRI JUSTICE N.V. RAMANA

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WRIT PETITION NO. 21641 of 1999

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Dated: 08.08.2005

Between:

Mr. Zaheer Ahmed,
44-18/1, Casabonita, Roja Street, Kurnool.

..... PETITIONER

AND

1 The Commercial Officer,
Kurnool Telecom District, Kurnool and another.

....RESPONDENTS

THE HON'BLE SRI JUSTICE N.V. RAMANA

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Writ Petition No. 21641 of 1999

ORDER:

This writ petition is filed seeking a Mandamus declaring the action of the respondents in disconnecting the Petitioner's Telephone
No. 49659 installed at 44-18-1, Casabonita, Roja Street, Kurnool as illegal, arbitrary and contrary to Rule 443 of Indian Telegraph Rules and consequently to direct the respondents to restore the said telephone connection immediately.

The petitioner states that pursuant to his application dated 26.07.1999, the telephone bearing No.49659 was allotted and installed at his house on 30.07.1999. The grievance of the petitioner is that the respondents, without giving any prior notice or intimation, disconnected his telephone connection immediately within one

week from the date of installation on the ground that a bill dated 01.05.1995 in respect of Telephone No.20443 standing in the name of his wife Dr. Zareena Zaheer Suri, was not paid. The petitioner further states that when the respondents without issuing the bills or copies of the same, which reflected the alleged arrears due from his wife, and in or around January, 1997, the telephone connection of his wife was disconnected, she filed a Consumer Complaint in O.P. No.252 of 1997 before the District Forum, Kurnool, and pending adjudication of the said complaint, the action of the respondents in disconnecting his telephone, is illegal and arbitrary. Hence, the present writ petition.

Even though the writ petition was admitted and interim direction was granted on 14.10.1999, no counter affidavit is filed by the respondents so far. When the matter is taken up for hearing today, none appears for the respondents nor is there any representation made on their behalf.

Heard the learned counsel for the petitioner.

The petitioner states that his wife, aggrieved by the demand notice dated 01.05.1995 issued by the respondents in respect of the telephone standing in her name, filed a Consumer Complaint in O.P.No.252 of 1997 before the District Forum, Kurnool, which was allowed by order dated 30.08.2000, and the appeal preferred against the same in F.A. No.427 of 2000 on the file of the A.P. State Consumer Disputes Redressal Commission, Hyderabad, by the respondents, was also dismissed by order dated 04.09.2003, and therefore, the action of the respondents in disconnecting his telephone on the ground that his wife has to pay arrears of bills is illegal, arbitrary and contrary to Rule 443 of Indian Telegraph Rules, and in support of his contention he relied on a decision of this Court reported in **Y. Pridhvi Kumar v. The General Manager, Telecom District, Hyderabad**.

Rule 443 of the Indian Telegraph Rules, which were framed under the rule making power under the Indian Telegraph Act, 1885, empowers the concerned authority to disconnect the telephone of a subscriber in default of payment. In the instant case, admittedly, the petitioner and his wife are having two different telephones, and there is no default in payment on the part of the petitioner. Merely because there is a relationship of wife and husband and as the wife has defaulted in payment of amounts to the respondents, no liability can be fastened to the petitioner, and more so when neither the statute nor the rules framed thereunder empower the authorities

to disconnect the telephone for the default committed by a spouse. Even, if any statute provides for such disconnection, the same would be arbitrary and unreasonable and be a clear infraction of the fundamental rights guaranteed under Article 14 of the Constitution of India.

On the other hand, aggrieved by the demand notice dated 01.05.1995 issued by the respondents against the wife of the petitioner, she filed a Consumer Complaint in O.P.No.252 of 1997 before the District Forum, Kurnool, which was allowed by order dated 30.08.2000, and the appeal being FA No.427 of 2000 on the file of the A.P. State Consumer Disputes Redressal Commission, Hyderabad, preferred by the respondents against the said order, was also dismissed by order dated 04.09.2003, and therefore, the action of the respondents in disconnecting the petitioner's telephone on the ground that his wife has to pay arrears of bills is contrary to the said Rule.

In that view of the matter, the writ petition is allowed and the respondents are interdicted from disconnecting the telephone bearing No.49659 of the petitioner. However, it is made clear that at a future point of time, if the petitioner makes any default with regard to any payments to be made pertaining to telephone No.49659, the authorities concerned shall be entitled to take such action as is available under law. No costs.

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(N.V. RAMANA, J)

Date: 08.08.2005

Nsr/Ksr

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice on this

Monday, the Eighth Day of August, Two Thousand and Five.

……REGISTRAR